



**Rule and Interpretive/Policy Statement Review Checklist**  
(This form must be filled out electronically.)

**This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.**

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-61-230 Bankruptcy**

Date last adopted/issued: **5/6/2000**

Reviewer: **Ed Ratcliffe**

Date review completed: **8/19/2002**

Briefly explain the subject matter of the document(s): **This rule explains that the real estate excise tax does not apply to Chapter 11 and 12 bankruptcy transfers of real property under a confirmed plan. Since this exemption from the real estate excise tax is under federal law, this rule provides a state source for locating and understanding how the federal exemption applies.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Need:**

YES	NO	
<b>X</b>		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	<b>X</b>	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	<b>X</b>	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)



<b>X</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain.

**3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:**

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	<b>X</b>	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	<b>X</b>	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**4. Clarity and Effectiveness:**

YES	NO	
<b>X</b>		Is the document written and organized in a clear and concise manner?
<b>X</b>		Are citations to other rules, laws, or other authority accurate? (If no, identify



		the incorrect citation below and provide the correct citation.)
<b>X</b>		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	<b>X</b>	Do changes in industry practices warrant repealing or revising this document?
	<b>X</b>	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

**5. Intent and Statutory Authority:**

YES	NO	
<b>X</b>		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
<b>X</b>		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If "no," identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	<b>X</b>	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain. **RCW 82.45.150 provides the department rule-making authority for the effective administration of this chapter. 11 U.S.C. 1146(c) and 1231(c) preempt a state stamp tax or similar tax upon the "making or delivery of an instrument of transfer under a plan confirmed." The rule aids administration of this chapter by explaining the federal preemption imposed upon this state taxing statute.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	<b>X</b>	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The bankruptcy courts adjudicate all bankruptcy claims. The rule should be maintained in a manner that is consistent with these courts decisions and rules. The Department should continue to work closely with the various county treasurers and the Washington Association of County Officials during the rulemaking process to eliminate or reduce inconsistency in how this federal preemption is processed.**



**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	<b>X</b>	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
<b>X</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>X</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
<b>X</b>		Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **RCW 82.45.060 and 82.46.010**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): **None.**

Court Decisions:

- **NVR Homes, Inc. v. Clerks of the Circuit Courts (In re NVR, LP)**, 189 F.3d 442 (4<sup>th</sup> Cir., 1999), certiorari denied, 528 U.S. 1117, 145 L. Ed. 2d 815, 120 S. Ct. 936, 2000 U.S. LEXIS 596, 68 U.S.L.W. 3459 (2000)(REET paid at time of transfer may not be refunded pursuant to later confirmation of Chapter 11 plan).
- **MARYLAND v. ANTONELLI CREDITORS' LIQUIDATING TRUST**, 123 F.3d 777 (4<sup>th</sup> Cir., 1997)(State's attempt to collect from transfers made from trust under a confirmed plan was collateral attack upon the plan and could not be made after confirmation of plan.)
- **In re GST Telecom, Inc.**, 2002 U.S. Dist. LEXIS 4662 (3<sup>rd</sup> Cir., 2002)(Plan does not have to be confirmed at time of transfer to exempt transfer of property under Chapter 11. However, Washington's use tax is not a stamp tax subject to 1146(c)).



- **In re Linc Capital, Inc., 2002 Bankr. LEXIS 786 (Bankr. N.D. ILL, 2002)**(Felt plan did not have to be confirmed at time of transfer to exempt transfer of property under Chapter 11.)
- **California State Board of Equalization v. Sierra Summit, Inc., 490 U.S. 228 (1998), In re China Peak Resort, 847 F.2d 570 (9<sup>th</sup> Cir., 1988), In re Jacoby-Bender, Inc. 40 BR 10 (Bankr. E.D. NY, 1984), affd., 758 F.2d 840 (2<sup>nd</sup> Cir., 1985), Re Amsterdam Ave. Dev. Associates, 103 BR 454 (Bankr. S.D. NY, 1989), Re Cantrup, 53 BR 104 (Bankr. D. Co., 1985), and Eastmet Corp., 907 F.2d 1487 (4<sup>th</sup> Cir., 1990).**

Board of Tax Appeals Decisions (BTAs): **None.**

Appeal Division Decisions (WTDs):

- **12 WTD 485 (1992)(plan does not have to be confirmed at time of transfer) - Previous revision to rule reversed this position.**

Attorney General Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

#### 10. Review Recommendation:

- ☐ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☒ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

**There is no need to revise this rule at this time.**



**11. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

\_\_\_\_\_ 1  
\_\_\_\_\_ 2  
\_\_\_\_\_ 3  
\_\_\_\_\_ 4